Mahaley v. Metters

Circuit Court of Arlington County, Virginia

May 25, 2023, Decided

CL21002581-00/01

Reporter
2023 Va. Cir. LEXIS 80 *

JOSEPH P. MAHALEY, et al., Plaintiffs, v. SAMUELUEL METTERS, et al., Defendants.

Core Terms

trust deed, modification, satisfaction, certificate, line of credit, pay in full, recorded

Judges: [*1] Daniel S. Fiore, II, Judge.

Opinion by: Daniel S. Fiore, II

Opinion

MEMORANDUM OPINION

The subject matter in this case is a recorded deed of trust against Joseph S. Mahaley's real estate in Arlington, Virginia, recorded prior to his purchase that was not brought to his attention beforehand. Mahaley intended to purchase the property free and clear of any lien. This case began after the beneficiary of the deed of trust proceeded to foreclose against Mahaley's interest. The Court previously heard and granted a preliminary injunction against foreclosure pending these proceedings. *See* Memorandum Opinion, October 19, 2021. The deed of trust was filed as a "modification" deed of trust, deceitfully prepared and recorded by Sonabank, to whom Defendant Primis Bank is the successor in interest. The secured land is known as 1408 N. Meade Street, Arlington, Virginia. Mahaley proceeded on his second amended complaint wherein the beneficiary Primis Bank and its trustee, Kevin O'Donnell, and Samuel and Bettye Metters, his predecessors in interest, are co-defendants. He seeks release of the "modification" deed of trust and a permanent injunction against foreclosure, and a personal judgement against the Metters.[1]

This matter [*2] was before the Court on a bench trial, March 15-18, 2023, upon Mahaley's Second Amended Complaint; upon evidence presented and the Court's determination of the weight afforded, including determination of witnesses' credibility; upon memoranda filed by the parties; upon argument by counsel; and upon the balance of the record, all of which the Court fully considered. At the close of Mahaley's case-in-chief, Defendants made their respective motions to strike, which the Court took under advisement considering the voluminous record and issues presented. The case proceeded and after closing arguments the Court invited further briefing.

The question before the Court is whether a deed of trust can be modified after its negotiable instrument has been paid in full. Under the facts of this case, the answer is no. The Court finds that such a modification is void ab initio, as there was no longer an obligation to secure. *See* Va. Code Sec. 8.3A-602. Furthermore, the Court finds, by clear and convincing evidence, that the conduct of Sonabank in recording the modification deed of trust, as will be further explained, was a misrepresentation of a material fact to the Clerk of Court, which the Court will not condone. Sonabank [*3] filed a modification to a deed of trust for one loan (loan number 160) that had been paid in full and used that "modified" deed of trust to secure an entirely different and then existing unsecured loan (loan number 212) for purpose of avoiding approximately $10,000.00 in recordation fee payable to the Clerk of the Circuit Court to secure Loan 212.

The relevant facts are straightforward. On May 9, 2008, Samuel Metters issued two separate promissory notes to Sonabank. The first note was a term loan in the amount of $2,000,000.00 designated as Loan 160. It was secured by a deed of trust recorded May 20, 2008, against 1408 N. Meade St., Arlington, Virginia. The second note was a credit line in the amount of $2,500,000 designated as Loan 212, as modified to $5,000,000.00. This credit line was not secured by a deed of trust on the subject real property.

[1] Samuel Metters passed away after this action was filed without a substitution of party having been made.

On or before May 10, 2012, Metters drew on the Loan 212 unsecured credit line to pay off the remaining balance of Loan 160. Primis concedes that Loan 160 was paid off at this time.[2] But on May 22, 2012, *after* the Loan 160 note was satisfied, Sonabank filed the subject modification to the Loan 160 deed of trust, represented as a modification [*4] of the deed of trust that secured the Loan 160 term note of $2,000,000.[3] Sonabank's "modification" deed of trust expressly provided in the margins of the instrument for all to see that it was securing Loan 160 — which was blatantly false. It was not a modification, as Loan 160 had been paid off. Instead, Sonabank used the ineffectual Loan 160 deed of trust to secure an entirely different loan that was unsecured.

At trial, Mahaley called as a witness, Marie Liebson, Primis Bank's Chief Credit Officer who testified that she was unaware of any modification to Loan 160. By using the existing deed of trust for Loan 160, that secured the original $2,000,000.00 Loan 160, since paid in full, to secure $2,000,000.00 of the Loan 212 credit line loan, Sonabank avoided paying a recordation tax on the Loan 212 money. In other words, by representing to the Clerk of the Court that Loan 160 had a $2,000,000.00 balance, instead of properly disclosing that a wholly separate loan was being secured (Loan 212), the Clerk of the Court was materially misled. Sonabank filed this modification to avoided paying nearly $10,000.00 to the Clerk of the Court that was required by law.

Loan 160 ceased to exist [*5] as an enforceable instrument once it was fully paid on May 10, 2012. It should have been released. The May 22, 2012, "modification" deed of trust was therefore a nullity, void ab initio, because there was no underlying instrument to secure, as it was paid in full.

At trial, Primis did not explain its predecessor's action of using the Loan 160 deed of trust for the unrelated, and unsecured, Loan 212 credit line note. But the record shows, by clear and convincing evidence, Sonabank acted to avoid the statutorily required recordation tax for a new deed of trust, here in the approximate amount of $10,000.00[4] *See* Va. Code. § 58.1-803.

Sonabank remitted only $21 for recordation tax to secure previously unsecured Loan 212. The Court finds that Sonabank willfully misrepresented a material fact to the Clerk of the Court for the purpose of avoiding the recordation tax. A tax loophole this was not. Intentional misrepresentation by a defendant and reliance by a plaintiff is the basis for an action at law for fraud and deceit.[5] The Court does not condone willfully fraudulent conduct to avoid rendering taxes to the Commonwealth. Were the Court to find the "modification" deed of trust to be a valid lien, it would be condoning [*6] Sonabank's deceitful act, something the Court easily refuses to do. A contract is void ab initio if it seriously offends law or public policy.[6] Primis may not benefit through the deceit of its predecessor, which deceit brought about the right to enforce Primis claims.[7]

Notwithstanding the foregoing, it appears from all reasonable inferences drawn from the evidence presented that a certificate of satisfaction was required of Sonabank once Loan 160 was paid in full. Pursuant to Va. Code § 55.1-339,

> [A]fter full payment of satisfaction has been made of a debt secured by a deed of trust . . . the lien creditor shall issue a certificate of satisfaction. . . . [T]he certificate of satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

Issuing a certificate of satisfaction is not a choice left to the discretion of creditors. It is a statutory mandate. When the language of a statute is unambiguous, the Court is bound by the plain meaning [*7] of that language. The Court must give effect to the legislature's intention as expressed by the language used unless a literal interpretation would result in a manifest absurdity.[8]

No evidence was presented to demonstrate that when

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[2] *See also* Mahaley Tr. Ex. 67, p. M&N 000314.

[3] Pl. Ex. 13.

[4] Pl. Ex. 34.

[5] Lloyd v. Smith, 150 Va. 132, 142 (1928).

[6] *Void*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[7] As noted, the facts of the underlying transaction are simple, so it is reasonable to find that when Primis purchased the paper from Sonabank the full circumstances would have been known, though such a finding is not necessary for the results herein.

[8] Payne v. Fairfax Cnty. Sch. Bd., 288 Va. 432, 436 (2014).

Samuel Metters and Bettye Metters signed the modification deed of trust on May 9, 2012, they intended to waive Sonabank's statutory obligation to issue a certificate of satisfaction on Loan 160. The Court finds no credible evidence that either Samuel or Mettye Metters understood the transaction as devised by Sonabank, nor that they were aware that the Clerk of the Court was being deceived through the Sonabank transaction.

Based on the foregoing, the Court denies Primis Bank's motion to strike, and the Court grants relief releasing the fraudulent "modification" deed of trust and permanently enjoins enforcement. Regarding Bettye Metters' motion to strike, there was no evidence presented sufficient for a finding against Mrs. Metters, so her motion is granted.

A copy of this Memorandum Opinion, along with the Court's Order to be endorsed by counsel prior to entry will be provided to counsel of record.

May 25, 2023

/s/ Daniel S. Fiore, II

Daniel S. Fiore, II

Judge, Arlington [*8] County Circuit Court

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